



## **Request for City Council Committee Action From the Department of Public Works**

**Date:** September 16, 2003  
**To:** Honorable Sandra Colvin Roy, Chair Transportation & Public Works Committee  
**Referral to:** Honorable Barb Johnson, Chair Ways & Means Committee

**Subject:** **Authorization to Execute Agreement with Mn/DOT for Delegated Authority on Federal-Aid Projects**

### **Recommendation:**

1. Passage of the Accompanying Resolution Authorizing the proper City Officers to execute Mn/DOT Agreement #84205 for Federal Participation in Construction.

### **Previous Directives:**

- Resolution 96R-246 (August 23, 1996) Directing Execution of a Delegated Authority on Federal-Aid Project Agreement No. 75274 with the Commissioner of Transportation

**Prepared by:** Heidi Hamilton, P.E., Engineer III, 673-3439

**Approved by:**

\_\_\_\_\_  
Klara A. Fabry, P.E., City Engineer, Director of Public Works

**Presenters:** Heidi Hamilton, Engineer III

### **Financial Impact** (Check those that apply)

\_\_\_ No financial impact - or - Action is within current department budget.  
(If checked, go directly to Background/Supporting Information)

\_\_\_ Action requires an appropriation increase to the Capital Budget

\_\_\_ Action requires an appropriation increase to the Operating Budget

\_\_\_ Action provides increased revenue for appropriation increase

\_\_\_ Action requires use of contingency or reserves

☒ Other financial impact (Explain): Agreement needs to be executed in order for the City of Minneapolis to receive Federal Funds for transportation capital improvement projects.

\_\_\_ Request provided to the Budget Office when provided to the Committee Coordinator

### **Background/Supporting Information:**

The Minnesota Department of Transportation (Mn/DOT) is the agency through which the City receives Federal funds for our Federal Aid projects. There is an agreement in place between the City and Mn/DOT (Mn/DOT Agreement No. 75274, City Agreement #10687) that outlines the process and requirements for administering the City's federal aid projects; known as the delegated contract process.

Mn/DOT has proposed a new agreement that outlines a revised delegated contract process (DCP). Mn/DOT requires that this agreement be executed prior to the execution of any construction contracts that will be administered under the DCP. Mn/DOT is requiring that all cities in the state with federal aid projects in the State Transportation Improvement Plan execute the revised agreement.

The new agreement is more explicit about specific roles and responsibilities of the State and the City in administering a federal aid project. It delegates more clearly the specific responsibility for federal aid projects to the City and clarifies Mn/DOT's role as acting only as the City's agent for receipt and disbursement of federal funds. Mn/DOT determined a need for a revised agreement due to issues that came to light during litigation of a federal aid project and due to policy changes by the Federal Highway Administration and Mn/DOT.

The agreement has been reviewed by the City Attorney's office.

We recommend passage of the accompanying resolution authorizing the proper City Officers to execute Mn/DOT Agreement No. 84205 for Federal Participation in Construction.

Attachment A :DRAFT Delegated Authority Agreement.

cc: Joe LaBat, Assistant City Attorney  
Tara Mugane, Professional Engineer



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**Date:** September 16, 2003  
**To:** Honorable Sandra Colvin Roy, Chair Transportation & Public Works Committee  
**Referral to:** Honorable Barb Johnson, Chair Ways & Means Committee

**Subject:** **Supplemental Information - Authorization to Execute Agreement with  
Mn/DOT for Delegated Authority on Federal-Aid Projects**

**Prepared by:** Heidi Hamilton, P.E., Engineer III, 673-3439 *HH*

Attached is a Draft Agreement with Mn/DOT for Delegated Authority on Federal-Aid Projects. We are working with Mn/DOT to revise the language in Paragraph I.I. regarding Claims. Mn/DOT and the City Attorney's Office are in conceptual agreement on content, but the final language is not yet available.

DRAFT

Mn/DOT Agreement No. 84205

STATE OF MINNESOTA AGENCY AGREEMENT  
BETWEEN  
DEPARTMENT OF TRANSPORTATION  
AND  
CITY OF MINNEAPOLIS

FOR FEDERAL PARTICIPATION IN CONSTRUCTION

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This agreement is entered into by and between the City of Minneapolis ("City") and the State of Minnesota acting through its Commissioner of Transportation ("Mn/DOT"),

Pursuant to Minnesota Statutes Section 161.36, the City desires Mn/DOT to act as the City's agent in accepting federal funds on the City's behalf for the construction, improvement, or enhancement of transportation financed either in whole or in part by federal funds, hereinafter referred to as the "Project(s)"; and

Mn/DOT requires that the terms and conditions of this agency be set forth in an agreement.

THE PARTIES AGREE AS FOLLOWS:

I. DUTIES OF THE CITY.

A. DESIGNATION. The City designates Mn/DOT to act as its agent in accepting federal funds in its behalf made available for the Project(s).

B. STAFFING.

1. The City will furnish and assign a publicly employed registered engineer, ("Project Engineer"), to be in responsible charge of the Project(s) and to supervise and direct the work to be performed under any construction contract let for the Project(s). In the alternative where the City elects to use a private consultant for construction engineering services, the City will provide a qualified, full-time public employee of the City, to be in responsible charge of the Project(s). The services of the City to be performed hereunder may not be assigned, sublet, or transferred unless the City is notified in writing by Mn/DOT that such action is permitted under 23 CFR 1.33 and 23 CFR 635.105 and state law. This written consent will in no way relieve the City from its primary responsibility for performance of the work.

2. During the progress of the work on the Project(s), the City authorizes its Project Engineer to request in writing specific engineering and/or technical services from Mn/DOT, pursuant to Minnesota Statutes Section 161.39. Such services may be covered by other technical service agreements. If Mn/DOT furnishes the services requested, and if Mn/DOT requests reimbursement, then the City will promptly pay Mn/DOT to reimburse the state trunk highway fund for the full cost and expense of furnishing such services. The costs and expenses will include the current Mn/DOT labor additives and overhead rates, subject to adjustment based on actual direct costs that have been verified by audit. Provision of such services will not be deemed to make Mn/DOT a principal or co-principal with respect to the Project(s).

C. **LETTING.** The City will prepare construction contracts in accordance with Minnesota law and applicable Federal laws and regulations.

1. The City will solicit bids after obtaining written notification from Mn/DOT that the Federal Highway Administration ("FHWA") has authorized the Project(s). Any Project(s) advertised prior to authorization will not be eligible for federal reimbursement.
2. The City will prepare the Proposal for Highway Construction for the construction contract, which will include all of the federal-aid provisions supplied by Mn/DOT.
3. The City will prepare and publish the bid solicitation for the Project(s) as required by state and federal laws. The City will include in the solicitation the required language for federal-aid construction contracts as supplied by Mn/DOT. The solicitation will state where the proposals, plans, and specifications are available for the inspection of prospective bidders, and where the City will receive the sealed bids.
4. The City may not include other work in the construction contract for the authorized Project(s) without obtaining prior notification from Mn/DOT that such work is allowed by FHWA. Failure to obtain such notification may result in the loss of some or all of the federal funds for the Project(s).
5. The City will prepare and sell the plan and proposal packages and prepare and distribute any addendums, if needed.
6. The City will receive and open bids.
7. After the bids are opened, the City Council will consider the bids and will award the bid to the lowest responsible bidder, or reject all bids. If the construction contract contains a goal for Disadvantaged Business Enterprises, the City will not award the bid until it has received certification of the Disadvantaged Business

Enterprise participation from the Mn/DOT Equal Employment Opportunity Office.

D. CONTRACT ADMINISTRATION.

1. The City will prepare and execute a construction contract with the Contractor, in accordance with the special provisions and the latest edition of Mn/DOT's Standard Specifications for Construction.
2. The Project(s) will be constructed in accordance with plans, special provisions, and standard specifications of each Project. The standard specifications will be the latest edition of Mn/DOT Standard Specifications for Highway Construction, and all amendments thereto. The plans, special provisions, and standard specifications will be on file at the City Engineer's Office. The plans, special provisions, and specifications are incorporated into this agreement by reference as though fully set forth herein.
3. The City will furnish the personnel, services, supplies, and equipment necessary to properly supervise, inspect, and document the work for the Project(s). The services of the City to be performed hereunder may not be assigned, sublet, or transferred unless the City is notified in writing by Mn/DOT that such action is permitted under 23 CFR 1.33 and 23 CFR 635.105 and state law. This written consent will in no way relieve the City from its primary responsibility for performance of the work.
4. The City will document quantities in accordance with the guidelines set forth in the Mn/DOT Contract Administration Manual Sections 410 and 420 that were in effect at the time the work was performed.
5. The City will test materials in accordance with the Mn/DOT Schedule of Materials Control in effect at the time each Project was let. The City will notify Mn/DOT when work is in progress on the Project(s) that requires observation by the Independent Assurance Inspector as required by the Independent Assurance Schedule.
6. The City may make changes in the plans or the character of the work, as may be necessary to complete the Project(s), and may enter into supplemental agreement(s) with the individual, firm, or corporation contracting for and undertaking prosecution of the prescribed work (hereinafter "Contractor"). The City will not be reimbursed for any costs of any work performed under a supplemental agreement unless Mn/DOT has notified the City that the subject work is eligible for federal funds and sufficient federal funds are available.
7. The City will request approval from Mn/DOT for all costs in excess of the amount of federal funds previously approved for the Project(s) prior to incurring

such costs. Failure to obtain such approval may result in such costs being disallowed for reimbursement.

8. The City will prepare reports, keep records, and perform work so as to enable Mn/DOT to collect the federal aid sought by the City. Required reports are listed in the Mn/DOT State Aid Manual, Delegated Contract Process Checklist, available from Mn/DOT's authorized representative. The City will retain all records and reports in accordance with Mn/DOT's record retention schedule for federal aid projects.
9. Upon completion of the Project(s), the Project Engineer will determine whether the work will be accepted.

E. PAYMENTS.

1. The entire cost of the Project(s) is to be paid from federal funds made available by the FHWA and by other funds provided by the City. The City will pay any part of the cost or expense of the Project(s) that is not paid by federal funds.
2. The City will prepare partial estimates in accordance with the terms of the construction contract for the Project(s). The Project Engineer will certify each partial estimate. Following certification of the partial estimate, the City will make partial payments to the Contractor in accordance with the terms of the construction contract for the Project(s).
3. Following certification of the partial estimate, the City may request reimbursement for costs eligible for federal funds. The City's request will be made to Mn/DOT and will include a copy of the certified partial estimate.
4. Upon completion of the Project(s), the City will prepare a final estimate in accordance with the terms of the construction contract for the Project(s). The Project Engineer will certify the final estimate. Following certification of the final estimate, the City will make the final payment to the Contractor in accordance with the terms of the construction contract for the Project(s).
5. Following certification of the final estimate, the City may request reimbursement for costs eligible for federal funds. The City's request will be made to Mn/DOT and will include a copy of the certified final estimate along with the required records.

F. LIMITATIONS.

1. The City will comply with all applicable Federal, State, and local laws, ordinances, and regulations.

2. **Nondiscrimination.** It is the policy of the Federal Highway Administration and the State of Minnesota that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance (42 U.S.C. 2000d). Through expansion of the mandate for nondiscrimination in Title VI and through parallel legislation, the prescribed bases of discrimination include race, color, sex, national origin, age, and disability. In addition, the Title VI program has been extended to cover all programs, activities and services of an entity receiving Federal financial assistance, whether such programs and activities are Federally assisted or not. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in, or is denied the benefits of, the program or activity on the grounds of race, color, national origin, sex, age, or disability. It is the responsibility of the City to carry out the above requirements.
3. **Workers' Compensation.** Any and all employees of the City or other persons while engaged in the performance of any work or services required or permitted by the City under this agreement will not be considered employees of Mn/DOT, and any and all claims that may arise under the Workers' Compensation Act of Minnesota on behalf of said employees, or other persons while so engaged, will in no way be the obligation or responsibility of Mn/DOT. The City will require proof of Workers' Compensation Insurance from any contractor and sub-contractor.
4. **Utilities.** The City will treat all public, private or cooperatively owned utility facilities which directly or indirectly serve the public and which occupy highway rights of way in conformance with 23 CFR 645 "Utilities" which is incorporated herein by reference.

G. **AUDIT.**

1. The City will comply with the Single Audit Act of 1984 and Office of Management and Budget (OMB) circular A-133, which are incorporated herein by reference.
2. As provided under Minnesota Statutes Section 16C.05, subdivision 5, all books, records, documents, and accounting procedures and practices of the City are subject to examination by the United States Government, Mn/DOT, and either the Legislative Auditor or the State Auditor as appropriate, for a minimum of seven years. The City will be responsible for any costs associated with the performance of the audit.

H. **MAINTENANCE.** The City assumes full responsibility for the operation and maintenance of any facility constructed or improved under this Agreement.



- I. CLAIMS. The City will pay any and all lawful claims arising out of or incidental to the performance of the Project(s) work. The City acknowledges that Mn/DOT is acting only as the City's agent for receipt and disbursement of federal funds, and not as a principal or co-principal with respect to the Project(s). In all events, the City will indemnify Mn/DOT and hold Mn/DOT harmless from any claims arising out of the Project(s).

II. DUTIES OF Mn/DOT.

- A. ACCEPTANCE. Mn/DOT accepts designation as Agent of the City for the receipt and disbursement of federal funds and will act in accordance herewith.

B. PROJECT ACTIVITIES.

1. Mn/DOT will make the necessary requests to the FHWA for authorization to use federal funds for the Project(s), and for reimbursement of eligible costs pursuant to the terms of this agreement.
2. Mn/DOT will provide to the City copies of the required Federal-aid clauses to be included in the bid solicitation and will provide the required Federal-aid provisions to be included in the Proposal for Highway Construction.
3. Mn/DOT will review and certify the DBE participation and notify the City when certification is complete.
4. Mn/DOT will provide the required labor postings.

C. PAYMENTS.

1. Mn/DOT will receive the federal funds to be paid by the FHWA for the Project(s), pursuant to Minnesota Statutes § 161.36, Subdivision 2.
2. Mn/DOT will reimburse the City, from said federal funds made available to each Project, for each partial payment request, subject to the availability and limits of those funds.
3. Upon completion of the Project(s), Mn/DOT will perform a final inspection and verify the federal and state eligibility of all the payment requests. If the Project is found to have been completed in accordance with the plans and specifications, Mn/DOT will promptly release any remaining federal funds due the City for the Project(s).
4. In the event Mn/DOT does not obtain funding from the Minnesota Legislature or other funding source, or funding cannot be continued at a sufficient level to allow for the processing of the federal aid reimbursement requests, the City may

continue the work with local funds only, until such time as Mn/DOT is able to process the federal aid reimbursement requests.

- D. **AUTHORITY.** Mn/DOT may withhold federal funds, where Mn/DOT or the FHWA determines that the Project(s) was not completed in compliance with federal requirements.
  - E. **INSPECTION.** Mn/DOT, the FHWA, or duly authorized representatives of the state and federal government will have the right to audit, evaluate and monitor the work performed under this agreement. The City will make available all books, records, and documents pertaining to the work hereunder, for a minimum of seven years following the closing of the construction contract.
- III. **TORT LIABILITY.** Each party is responsible for its own acts and omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of any others and the results thereof. The Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, governs Mn/DOT liability.
  - IV. **ASSIGNMENT.** Neither party will assign or transfer any rights or obligations under this agreement without prior written approval of the other party.
  - V. **AMENDMENTS.** Any amendments/supplements to this Agreement will be in writing and executed by the same parties who executed the original agreement, or their successors in office.
  - VI. **AGREEMENT EFFECTIVE DATE.** This agreement is effective upon execution by the appropriate State officials pursuant to Minnesota Statutes Section 16C.05.
  - VII. **CANCELLATION.** This agreement may be canceled by the City or Mn/DOT at any time, with or without cause, upon ninety (90) days written notice to the other party. Such termination will not remove any unfulfilled financial obligations of the City as set forth in this Agreement. In the event of such a cancellation the City will be entitled to reimbursement for Mn/DOT-approved federally eligible expenses incurred for work satisfactorily performed on the Project to the date of cancellation subject to the terms of this agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

**1. CITY**

City certifies that the appropriate person(s)  
have executed the contract on behalf of the City as  
required by applicable articles, bylaws, resolutions, or ordinances

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**2. DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_

Title: Director  
State Aid for Local Transportation

Date: \_\_\_\_\_

**3. COMMISSIONER OF ADMINISTRATION**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**4. ATTORNEY GENERAL**

As to form and execution

By: \_\_\_\_\_

Date: \_\_\_\_\_